

Nuclear Regulatory Commission

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staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained on the paragraph (l)(1) of this section, the request or petition will be treated as a petition under § 2.206 and referred for appropriate disposition.

(m) The filing or granting of a request for a hearing or petition for leave to intervene need not delay NRC staff action regarding an application for a licensing action covered by this subpart.

(n) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(o) If the presiding officer denies a request for a hearing or a petition for leave to intervene in its entirety, the action is appealable within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been denied in its entirety. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

[54 FR 8276, Feb. 28, 1989, as amended at 55 FR 36806, Sept. 7, 1990; 59 FR 29189, June 6, 1994; 61 FR 39297, July 29, 1996; 63 FR 66730, Dec. 3, 1998; 64 FR 29214, June 1, 1999]

§ 2.1207 Designation of presiding officer.

(a) Unless otherwise ordered by the Commission or as provided in paragraph (b) of this section, within ten (10)

days of receiving from the Office of the Secretary a request for a hearing relating to a licensing proceeding covered by this subpart, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a single member of the panel to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct the hearing.

(b) For any request for hearing relating to an application under 10 CFR part 70 to receive and store unirradiated fuel at the site of a production or utilization facility that also is the subject of a proceeding under subpart G of this part for the issuance of an operating license, within ten (10) days of receiving from the Office of the Secretary a request for a hearing the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a Licensing Board conducting the operating license proceeding to rule on the request for a hearing and, if necessary, to conduct the hearing in accordance with this subpart. Upon certification to the Commission by the Licensing Board designated to conduct the hearing that the matters presented for adjudication by the parties with respect to the part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR part 50, the Licensing Board may conduct the hearing in accordance with the procedures in subpart G.

§ 2.1209 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. The presiding officer has all powers necessary to those ends, including the power to—

(a) Regulate the course of the hearing and the conduct of the participants;

(b) Dispose of procedural requests or similar matters;

(c) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(d) Certify questions to the Commission for determination, either in the presiding officer's discretion or on direction of the Commission;

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(e) Reopen a closed record for the reception of further information at any time prior to initial decision in accordance with § 2.734;

(f) Administer oaths and affirmations;

(g) Issue initial decisions;

(h) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents for the hearing;

(i) Receive written or oral evidence and take official notice of any fact in accordance with § 2.743(i);

(j) Appoint special assistants from the Atomic Safety and Licensing Board Panel in accordance with § 2.722;

(k) Recommend to the Commission that procedures other than those authorized under this subpart be used in a particular proceeding; and

(l) Take any other action consistent with the Act and this chapter.

[54 FR 8276, Feb. 28, 1989, as amended at 56 FR 29411, June 27, 1991]

§ 2.1211 Participation by a person not a party.

(a) The presiding officer may permit a person who is not a party to make a limited appearance in order to state his or her views on the issues. Limited appearances may be in writing or oral, at the discretion of the presiding officer, and are governed by rules adopted by the presiding officer. A limited appearance statement is not to be considered part of the decisional record under § 2.1251(c).

(b) Within 30 days of an order granting a request for a hearing under § 2.1205 (b) through (d) or, in instances when it is published, within 30 days of notice of hearing issued under § 2.1205(j), the representative of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requester's area of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requester's areas of concern, the presiding officer shall afford the re-

quester a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this paragraph may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

[54 FR 8276, Feb. 28, 1989, as amended at 61 FR 39298, July 29, 1996; 64 FR 29213, June 1, 1999]

§ 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(b), the NRC staff shall be a party to the proceeding. If a hearing request is filed under § 2.1205 (c) or (d), within 10 days of the designation of a presiding officer pursuant to § 2.1207, the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. In addition, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by the staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

[61 FR 39298, July 29, 1996]

§ 2.1215 Appearance and practice.

(a) An individual may appear in an adjudication under this subpart on his or her own behalf or by an attorney-at-law. Representation by an attorney-at-law is not necessary in order for an organization or a § 2.1211(b) participant to appear in an adjudication conducted under this subpart. If the representative of an organization is not an attorney-at-law, he or she shall be a member or officer of the organization represented. Upon request of the presiding officer, an individual acting as a representative shall provide appropriate information establishing the basis of his or her authority to act in a representational capacity.

(b) Any action to reprimand, censure, or suspend a party, a § 2.1211(b) participant, or the representative of a party or a § 2.1211(b) participant must be in